/240 cont./

184 This immediate datum is thrust upon the observer as on the users. In addition, for the analysis, it will be the best of the bases of departure.

Admittedly, difficulty begins almost at once: For if one indeed sees the basic unity, contrasting with the vehemence of the personalities that stand out from it, the investigation fails to press the contrast harder. For example, we do not know the Gedmiwa, a group of antiquity as venerable as the Seksawa, well enough for the comparison between the two to go beyond the plane of simple description. It is not yet possible to define seriously the culture of this Moroccan South-West, which asserts itself by characters as tangible as the speech or the very figure of the inhabitant. It is not yet possible to state precisely or to explain how, out of this homogeneity, particularisms /241/ sufficiently lively for their exchanges to be ordered in relations of external law are articulated.

131 [133] Here between the Lemgo, the Kattos, and the Atlasic arête is a mountainous quadrilateral some thirty kilometers on a side as the crow flies. At least four juridical identities are crowded there: Nfifa, Demsira, Dwiran, and Seksawa. And each one in turn is subdivided.

619 [585] [691] [695] The consistency of the amerwas, "matrimonial gift," the effective force of coswearers imposed according to the gravity of a litigation go from simple to double if the litigants do not belong to the same unit. Today the unit is the "tribe": Seksawa, Dwiran, etc. But this can also be, more authentically, what we 619 call the "fraction," that is, the taqbilt. And there are seven or 634 eight of them merely in Seksawa. Thus, in Demsira, the rate of 585 the amerwas varies according to four zones which apply the regime of exteriority to one another. In the case of a girl given [184] to a Mtuggi, the chchard', stipulated marriage-settlement for the benefit of the bride, includes in certain taqbilt-s, and not in 619 others, the obligation for landed property. In land matters, 634 extracantonal testimony is not secured. Avowed reason: because 671 the foreigner could not be well informed. But, obviously, it is [186] because the group prizes its juridical integrity. Between different [184]

/276 cont./

794 Sometimes, on the contrary, he collects the right to a prefer-
875 ence share from the harvest: 1/40 as in a. Lh'sen, 1/30 as in
212 Imt'ddan, etc. /277/ Just as the dues to the saints establish, not
the rudiments, but a meticulous system of fiscality, the recom-
pense of the t't'olba, like the collection and the management of
the dues, properly establishes in the group an outline of admini-
[231] tration. That fully emerges from regular institutions, such as the
periodic slaughtering of fresh meat, luzi^{c}t, itself in close rela-
tions, though not constant, with the sacrifice to the saints,
[675] tighersi. There, as we have shown elsewhere (1),

1. J. Berque, "Un glossaire arabo-chleuh du Deren (XVIII^{e} siècle)," R. afr., 1950, pp. 383 sq., where these ceremonies are described in full. Bibl. of luzi^{c}t, p. 383, n. 25.

the contractual aspect, appearing in notarial technique, predominates over all the others.

794 It is the same for the "stipulations" to the saints, chchard'.
675 One will note the identity of this term with that designating the
[585] authorized marriage settlement to the bride over and above the
amerwas. Thus there we are in full agreement. An act recorded
175 at the sanctuary of sidi Âbderrah'man b. Messâud, in the Mtugga,
794 illustrates the way in which the great saint of the a. Daud, sidi
776 Sâid u Âbdennâim, founder of a "maraboutic principality" in the
675 Sous, used it to the end of his days. He summoned the H'âh'a
[796] and the Mtugga to his bedside. After a pious homily, he re-
quested of them the annual celebration of a mârûf at the begin-
ning of the month of "Berbère /Berber/ March," mars ^{c}ajâmî
(sic). They agreed in a great burst of contrition. And of each
tribe to take it upon itself spontaneously to pay to the descendants
of the saint -- that one barley, that one butter or oil. The whole
was styled khidma, "service," and churût', "stipulations." That
took place during the tenth century of the Hegira, that is, our
sixteenth century. And although precisely this saint has no client
among our Seksawa, the text applies to them equally. It indicates

695 /330 cont./
Notably in the Moyen /Middle/ Atlas, its favorite milieu, they have posed it as the sole mode of proof. In Morocco, as in Algeria, it holds a place of honor in Berbère /Berber/ studies, which, according to general vagaries, seem not to have sufficiently circumscribed its aspects. Does Chleuh /Shluh/, and more precisely Seksawa, society, with its careful demarcations permit doing it? It will permit in any case, thanks to good fortune, the discovery of an act from the end of the fifteenth century, casting some light upon a considerable problem, that of the historical relations between plural testimony and the plural oath, cojuratio and laf'if, in Moroccan Mussulman law.

695 784 In Seksawa the oath is above all a releasing of magico-religious forces. That is demonstrated by what I shall call "the exception of Aldebaran." No oath may be taken in the mountains [245] before the period called that of Aldebaran (beginning of May): it [824] is the one when the fructification of the almond trees is con- [823] sidered assured. If the interdiction is broken, the entire harvest will be lost. On the other hand, the oath, even an insincere one, remains harmless if it is taken by the Seksawa on the plain. No moral explanation, punishment for perjury or anything else is alleged. It is indeed, and almost expressly, the releasing of forces [585] whose effect is feared. Let us note as a corollary that the a. H'adduyws proscribe not only the taking of oaths, but the celebration of marriage, tameghra, during the critical period. The [184] Idma, the Imt'ddan, the a. Lh'sen from above, the Iguntar also do this. Only /331/ the a. Abdella and the a. Musa escape the rule. Even among the latter, those from downstream forbid taking oaths before the ddurt feast of the Regraga in May. In the upper cantons, the interdiction extends not only to the taking of oaths and the celebration of marriage, but also to the solemn reading of titles to the terrain, which furnishes a nice confirmation of the views set forth above.

/The following two paragraphs are in small type in the original source./ To return to the matter of the oath, let us again call on a commentary of the a. Lh'sen.

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584 3) the feast called asghurt: it gives to the ensemble its name, which etymologically evokes a "ritual cry."

Beyond the presents handed over on this occasion, arising from an economy of the gift and of the feasting, the young man owes to the girl during this period clothing and ornaments, according to the customary modalities. He contributes to her support at the domicile of her parents. In exchange, she owes him a certain intimacy in general not total, and joins him in various practices bringing into play age classes and rites of passage: young people's feasts and evenings, applications of henna. The unilateral rupture of this state by the young woman entails on her part the obligation to give back the gifts and expenses incurred.

585 b) The "nuptials," tameghra, include a ritual part, a statutory part, and a conventional part.

Ritual part:

1) The tarzift: the delivery of propitiatory gifts by the young man to his parents-in-law, giving rise to a "procession," and sometimes to simulated pillage;
2) the processional conveyance of the young woman to the marital house, this is the ɛid n-tslit;
3) the exposition of the dotal contribution of the bride, the ɛid uruku;
4) the utterance of the fɛtih'a, Koranic formula accompanied by wishes of good augury;

/342/ 5) The consummation: this is the ɛid ukechchum, sanctioned, if it is a matter of a virgin, by the yo-ho /Fr. youyou/ of the matron on duty, taghorit, and a new gift, lh'aqq n-ɕɕbɛh'.

Statutory part:

585 675 586 1) Conclusion of the amerwas: promise by the bridegroom to the bride to have to pay her, in case of dissolution of the marriage, a sum uniformly fixed by the custom of each tribe, and varying from one to the other: in Seksawa, 6.50 for a virgin, 3.25 for a nonvirgin;

/342 cont./

585 [428] 2) Right henceforth acquired by the wife to her part of inheritance anticipated by the law, that is, half of one part of the male heir, conforming to the fiqh. Her right to the acquests remains dependent on an extension of one year of common life.

Conventional part (and facultative in principle):

1) The chchard', "stipulated marriage settlement" by the bridegroom for the benefit of the bride;

2) The taking in charge, by the same, of the jihaz, "contribution of the bride into the community."

[788] [779] An official report of these conventions is drawn up in this case by literate men when the fâtih'a is pronounced; this is the only moment when an atmosphere of religious law reigns. A moment short and eccentric, in the proper sense of the term.

c) The "conjugal state," litihal. Its first aspect, to which are attached magical, sentimental, and moral notions, is that of cohabitation and procreation.

585 421 Under its second aspect, which is that of a society of work, it includes the right of the woman to her share of acquests (tizzla) among the other participants in the familial society (imezzalen), in equality with each of the latter, men or women, and once the deduction has been made for the contribution of the ones and the others. The marital contribution counts officially for a half out of the ensemble of acquests. That is a patrimonial praecipuum.

[562] The woman's right to her share is regarded as the counterpart of the tasks that custom imposes on her, according to a rigorous discrimination with regard to those that fall to the men. Today it is likewise regarded as compensation for the statutory modicity of the amerwas. This, however, is undoubtedly a reinterpretation.

586 562 d) "Dissolution," uluf. The repudiation pronounced by the man is always definitive. The woman's liberation is authorized by the delivery of a document, tabrat, which she often requests by the judiciary route at the same time as her share of acquests. The woman may, as in the fiqh, judicially request the dissolution of the marriage on grounds (cruelty, impotence, etc.), submitted

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586 562 to the evaluation of the magistrates. But in Seksawa she can obtain it on simple incompatability, which constitutes an exorbitant originality in relation to the fiqh.

As an orf judge said, only the woman may be the judge of the d'd'arar ddakhili, that is, "hidden objections." An original vein of protective tenderness with regard to daughters and sisters circulates here in /343/ the customs. It is so notable that, the regularization of this practice having been brought about by tribal deliberation in 1949, the jemâa unanimously, with one exception, manifested its formal agreement. The isolated one was from the Bas /Lower/ Seksawa. A man from Arab confines.

Comparison with Orthodox Marriage

585 171 While there can be no question here of a historical comparison between the Chleuh /Shluh/ institution and the Mussulman institution, as it is presented in theory on the one hand, in Moroccan practice on the other, one immediately notices certain differences.

First of all, a difference of profile in time. The conclusion of the orthodox nikâh' is sanctioned by the payment of at least a part of the çadâq /ṣadāq/. This is incontestably its point of de-

584 171 parture. Nothing is less true of Chleuh /Shluh/ marriage, where the nuptials are preceded by what I have called a prenuptial stage, which is not always today, and in any case seems not to have been formerly, exclusive of the sexual act. But let us not dwell on this question; it could be suitably treated only in the perspectives of the Berbère /Berber/ comparativism that a recently opened controversy over "Kabyle betrothal" (1)

584 171 114 1. I am thinking of the malicious criticisms by G.-H. Bousquet, Justice française et coutumes kabiles /French justice and Kabyle customs/, 1950, p. 63. If, however, on a juridical plane, they appear decisive, I wonder if the question would not merit being thoroughly examined on the plane of general ethnology. A. Magdelain,

/344 cont./

585 675 171 Even more instructive is the indefinite bringing forward of the payment of this amerwas, deemed to correspond to the çadâq. It is known that in fiqh at least a part of the çadâq must be paid in cash. Absolutely not in the Sous. The fact that the payment of the amerwas as regards the totality is to be postponed there until the dissolution of the marriage: 1) clearly dissociates it from the consummation of the marriage, and thus even removes it from its orthodox role of canonical purifier of the sexual act (2);

[192] 2. And nevertheless a "marabout" jurist such as an-Nâçirî, Ajwiba, ms. of the zaouia of the Mez'ud'a, p. 40, l. 14, must consider that the indefinite carrying forward of the integrality of the çadâq (in this case the amerwas) is without inconvenience and does not render the marriage illicit.

[586] Let us recall — without, of course, wishing to establish a comparison — that Moroccan Hebraic law brings these diverse notions together under the name of kitubba. The latter, quite like the Berbère /Berber/ amerwas, is demandable only in case of dissolution of the marriage. The "forfeiture" aspect is moreover more pronounced it it. Cf. on the kitubba, E. Malka, "La constitution du douaire par contrat de mariage /The constitution of the marriage settlement by marriage contract/," Revue marocaine de droit, 1952, pp. 209 sq.

2) leads one to seek in other traits of Chleuh /Shluh/ marriage the veritable inaugural formalities.

The invariability of the amerwas in one and the same tribe (3)

3. Westermarck has already noted it, Les cérémonies du mariage au Maroc /Marriage ceremonies in Morocco/, 1921, pp. 61, 67. He even gives a

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/footnote 3 continued/ remarkable example: that of the Glâwa, where his quantum varies according to the subgroups (p. 62). In case of flight by the married woman, the rate of compensation varies, he writes, according to the tribes or the subdivision of tribes (pp. 57 sq.). The Arab jurists cite the practice of an invariable ṣadâq as tainted by Bedouinism. Cf. at-Tasûlî, Comm. Tuh'fa /Commentary of the Tuh'fa/, 1355 ed., t. I, p. 247, l. 6 sq., and 27 sq., with citation of this Abû ᶜAlî whom we always find as revealer of Moroccan authenticity: lâ yuzâdu ᶜalay-hi li-jamâli-ha wa lâ yanquṣu li-qubh': "beauty or ugliness is of no importance," the famous cadi says, smiling a little!

is the second of the characteristics that set it opposite the ṣadâq. The amount of the /345/ latter in Arab countries is not statutory, but contractual. But has it always been the same? Here again we find, attested to by the jurists, an ancient Bedouin stage, where the practice of a ṣadâq, invariable and payable only upon the dissolution of the marriage, would have been general at a certain time, since authorities as scattered as Ibn ᶜArafa (Tunis), al-Qawrî (Fès), and cadis of Sijilmâsa are cited with respect to this (1).

1. At-Tasûlî, Comm. de la Tuh'fa, 1355, t. I, p. 250, l. 4 sq.

Indications Concerning the Anterior State

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In any case, the uniformity and modicity of the amerwas, its liaison, not at all with the consummation, but indeed with the dissolution of the marriage, lead, at least for the Chleuh /Shluh/ group, to the hypothesis that it may be a matter here of an element superposed, perhaps by way of authority, upon an

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675 autochthonous institution, survivals of which are to be found in
585 the asghurt and where it would as yet be only incompletely dis-
586 solved. The comparison of the institutions only ends in an im-
121 passe there, for we are back to the historical problem of the penetration of the fiqh in this region of Morocco.

779 To the dossier, still quite light, of this discussion, I shall
792 bring only one contribution, but precise and datable: this is a
175 text taken from the Nawâzil of the Cheikh /Sheik/ Mah'ammad
585 ibn Nâçir (d. 1674), master of a great religious brotherhood, and
675 initiator from the Moroccan South.

/The following paragraph is in small type in the original source./ The Cheikh married persons who had come to rely on him. He began by questioning two among them, who were of the same tribe, on the amount of the çadâq in their country at the same time as on their matrimonial usage. After many silences, they answered him, "We are of your faith and your flock. Do what you judge good to do." "As for us," said the Cheikh, "our practice is simple. I myself once gave one of my female relatives in marriage without asking for anything more than a dish of couscous for the clerks. Such was in fact the custom of our ancestors. But I have reformed it and abandoned it in order to adhere to the sunna of the Prophet. Our present practice is one of the simplest, be it a matter of the banquet or of the çadâq. I have fixed the latter at three mithqâl-s of money by weight." He then added: "Where is the representative of the husband?" He was pointed out to him. He then requested witnesses, and when they were before him, in the presence of the representative of the woman, he declared: "Praise God. We praise Him and by Him we guide ourselves. Witness that I have married such-and-such a daughter of so-and-so and such-and-such a son of so-and-so, both from such-and-such a country, within the rights and stipulations of the woman, the sunna of the Prophet, and against legitimating çadâq (2)."

2. Mah'ammad b. Nâçir ad-Dar^{c}î, Ajwiba, ms. of the zaouia of the Mez'ud'a, p. 40, l. 11 sq.

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/346/ This took place in the middle of the seventeenth century. It is a matter of a pious personage, a holy man and converter. His family is from the Drâ, from which the Saâdians had surged forth in the preceding century in an intense religious and martial fermentation. Let us not take this evidence for anything other than what it is: an isolated trait in the present state of the examinations. But, as such, it does not cease to be disturbing, as much by what it reveals of the practices of the period as by its orthodoxy, still of a bizarre taste.

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But do we not find the trace of former organizations in the Z'init' fair for wives? According to some evidence from the fourteenth century, the saint camped surrounded by two separate groups: the women and the men. It is not impossible that this was an indication of a classificatory rite. Even now the promise exchanged by the fiancés during the exaltation of the feast and the sacrifice near the tomb of Lalla Aziza creates an irremissible obligation. A man from the Gedmiwa who had ventured to escape from it was found a few years ago hung in his room. Trace of former collective functions? The written sources impose a salutary lesson of prudence over this point in the hypothesis.

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/The following three paragraphs are in small print in the original source./ An act of 916 Heg.: 1510, and one which offers some interest by reproducing this hapax that seems to have been, since Ibn Khaldûn, the name of the Genfisa, is a marriage contract, drawn up according to the habitual pomp of the style of the city. It anticipates a ṣadâq of 200 dinars, an unheard-of sum for the period. To which are added clothes, jewels, slave. The total is taken care of by the father of the husband, along with the production of real guarantees. A naqd is paid. There are stipulated as the responsibility of the husband, a curious thing in testimony emanating from such an ancient and supposedly such a rough milieu, "pleasantness in relations, the instruction of the woman in her religion, and in attention to the good." This text, by the style, the content, and, one might say, the sentiment, is discordant in these remote cantons.

Another act, more recent, and coming from the great family of the upper valley, this haunt of authenticity that the a. D'alh'a

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585 675 175 are. It dates from 1299 Heg.: 1824. The formulary perfection is even more marked here: beginning eulogies in rhymed prose, wishes of benediction and good augury, favorable description of the two married people. The ṣadâq is some 50 mithqâl-s in money, ᶜabbâsiyya.

Another contract, of which use has already made, and which is from 1042 Heg.: 1630, also carries a ṣadâq high in cash and kind. It is true that it is a matter of a young lord, ach-chaykh ach-châbb, a singular expression that undoubtedly sets one on the track of understanding.

It is evident that a particular style: literary wording, numerical hyperbole, care taken in preserving the document, must have presided over the marriage agreements insofar as they /347/ escaped statutory banality. In other words, it must have been a matter of exceptional cases: the sons and daughters of chiefs or marabouts, emerging from the milieu, but that cannot infirm statistically the general rule. Such testimony does not only reflect a characteristic variety. Basic contrasts have been able to force their way out at all times in the mountains, between the villein and the lord, the traditionalist and the odd person, the impious and the scholar. The milieu had to find an escape from the dissatisfactions caused by the inequality of culture or fortune.

585 [562] However that may be then, not only in the division of the acquests, but even, in certain cases, in the matter of the nuptial gift, the Seksawa woman knows an eminent economic dignity. One has seen above how the institution went beyond the Mussulman pattern, upon which, after the event, it was desired to model it. It went beyond it as much in the ceremonial richness, magico-juridical foundations, statutory egalitarianism, as in the contractual acuity. 585 171 Nothing makes the originality of the system stand out better than its opposition to another system, the Kabyle one (1).

1. Essentially Hanoteau and Letourneux, La Kabylie et les coutumes kabyles /Kabylia and Kabyle customs/, 1873, t. II, pp. 148 sq., and the criticism of it by G.-H. Bousquet.

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/footnote 1 continued/ Justice française et coutumes kabiles /French justice and Kabyle customs/, 1950, pp. 48 sq. What is striking in the stage described by H.-L. is the nullity of the woman's rights, not only concerning what would correspond to acquests, but even concerning the "nuptial price," taẓmamt or tutchit, which I translate thus provisionally, for lack of anything better, and even concerning the conventional supplements, or chrut'. What is called cedak' in Kabylia (H.-L., ibid., p. 162) is in sum only a facultative marriage settlement handed over by the parents and deemed equal to renunciation of inheritance. The powers of the husband are exorbitant, since they sometimes include beyond the grave a sort of right of retention, taẓllak'ith (ibid., p. 156), and, in case of repudiation, a negotiable power of interdiction, capable of rendering the woman thamaouok't (p. 178), etc.

which one would imagine to be quite close to it by reason of so many analogies in the habitat and the public law. Now what is striking in the Kabyle system is its brutal masculinity, its negation of any bilateral equity in the status of the conjoints. In the eyes of the French reformer this is a permanent scandal, but a very resistant scandal, against which up to now one has been able to do very little. That speaks of its profound adherence to the milieu.

Let us content ourselves with this brief reference to another Maghrebi law, in order to make the balanced character and the moral value of the Seksawa type stand out. And the comparison will have another advantage: that of dissuading the investigator from calling on a hypothetical common basis of Berbère /Berber/

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institutions in order to account for their originality (2).

2. The comparison with the neighboring Ud Besseba[C] is characteristic. The "masculinity" of their mores is so marked that the woman often gives up the rights that the fiqh gives her, such as, for example, the /this footnote is continued on the following page in the original source/ food allowance for the children. To tell the truth, the Moroccan [C]Amal has naturally registered as a "Bedouin" practice the calculation of an indemnity corresponding to the si[C]âya of the woman, that is, to her comings and goings outside the house. This is what is called the kidd and what the cadis willingly apply to Berbère /Berber/ tribes subject to the chra[C] /Sharira/, such as the Mtugga and the Mez'ud'a.

/348/ The Family In Time

613 Under such a rubric will be grouped aspects that a classification excessively steeped in our manuals would study successively by the titles of filiation, the state of persons, guardianship, successoral status, adoption, and foundation (1).

1. This is what is done by J. Lafond, Les sources du droit coutumier dans le Sous /The sources of customary law in the Sous/, 1948, pp. 47 sq.

This family in time, which is also, as one has seen, a family in space, is the ikhs. Now its traits appear only in the form of twists or of subterfuges, of flights from the fiqh. This is, moreover, a classic method, but here one whose coherence, obstinacy as

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/footnote 2 continued/ sullied by partiality than that of the inflas, whose rapacity is feared.

•[585] [586] [428] Marriages and divorces are concluded in his presence. He conducts the proceedings for the apportionment of inheritances and then appropriates a small part of the estates. He punishes according to the ᶜorf -- the custom -- crimes and offenses, and imposes the fines that are proper for each mistake. The money thus collected is divided into three parts: the first goes to the moqaddem; the second is for the taqbilt, which the inflas consider that they represent completely in this circumstance; the last part constitutes a small reserve fund for the expenses of hospitality.

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[292] [613] [571] [754] [574] [431] [628] [574] The moqaddem's authority varies according to his wealth and personal situation. If he is already, because of the power of his "ikhs," an important notable, he is seen, clothed in garb /225/ of white wool, which manifests his high rank, to deliberate, to fix the round of hospitality, to accept the "ᶜar" /protector relationship based on a conditional curse/ of foreigners who ask for protection, and to have given to one who offers him a sacrifice some grain and walnuts by contribution of the whole canton. He concludes alliances with neighboring cantons and presides at the "tinoubga," festivals given on the occasion of visits by foreign warriors. If the moqaddem, on the contrary, is a man without influence, he effaces himself before the "inflas" or the "ᶜawan," who compete to have all the disputes settled to the advantage of their family. When the year has passed, the moqaddem brings the inflas together and calls for his replacement. As an exception his post is renewed for a year, "if his magistrature has been happy," but never longer.

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[178] As a result of the general tendency toward the development of personal power, people in the Haut-Atlas /High Atlas/ in our day somewhat scorn the effaced moqaddems who abide by the ancient tradition, according to which they would be only the agents of their brothers. One who does not know how to speak